

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

LINDA BEREKA,

Plaintiff,

v.

TARGET CORPORATION, and DOES  
1 to 25,

Defendants.

No. 2:24-cv-01154-JAM-DMC

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS**

Before the Court is Target Corporation's (hereinafter, "Defendant") motion to dismiss four of the five causes of action in Linda Berexa's (hereinafter, "Plaintiff") First Amended Complaint ("FAC"). See Mot., ECF No. 16; FAC, ECF No. 15. Plaintiff opposed. See Opp'n, ECF No. 18. Defendant replied. See Reply, ECF No. 19. For the following reasons, Defendant's motion is granted with prejudice.<sup>1</sup>

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<sup>1</sup>This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for September 24, 2024.

I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

Plaintiff originally filed suit in the Superior Court of California, County of Butte. See Notice of Removal, ECF No. 1. Defendant then timely removed the case to federal court under diversity jurisdiction. See id.; see also 28 U.S.C. § 1441.

This controversy arises out of a personal injury that Plaintiff suffered while at Defendant's store. See FAC ¶ 9. Plaintiff is an 80-year-old woman who is physically disabled due to osteoarthritis and sciatica. Id. ¶ 6. Defendant is a corporation that owns and operates the store where Plaintiff was injured. Id. ¶ 7. While Plaintiff was standing in the check-out line, an employee of Defendant drove a motorized accessibility scooter into her shopping cart, which caused Plaintiff to fall and sustain injuries. Id. ¶ 9.

In the FAC, Plaintiff brings five causes of action: (1) violation of Title III of the Americans with Disabilities Act of 1990 ("ADA"); (2) violation of the California Disabled Persons Act ("DPA"); (3) violation of the Unruh Civil Rights Act ("Unruh"); (4) denial of full and equal access to a public accommodation pursuant to California Health and Safety Code Section 19955(a); and (5) personal injury. FAC ¶¶ 15-50.

Defendant now moves to dismiss the first four causes of action, arguing that Plaintiff has failed to plead necessary facts to present plausible claims under these laws. Mot. at 1-2.

Plaintiff counters that it has sufficiently pled these claims. Opp'n at 2.

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## II. OPINION

A. Legal Standard

A Rule 12(b)(6) motion challenges the sufficiency of a complaint for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). “To survive a motion to dismiss [under 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal quotation marks and citation omitted). Plausibility requires “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. While “detailed factual allegations” are unnecessary, the complaint must allege more than “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” Id. Conclusory allegations are not to be considered in the plausibility analysis. Id. at 679 (“While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.”). When a plaintiff fails to “state a claim upon which relief can be granted,” the Court must dismiss the case. Fed. R. Civ. P. 12(b)(6).

B. Americans with Disabilities Act

To prevail on a Title III claim, “the plaintiff must show that (1) she is disabled within the meaning of the ADA; (2) the defendant is a private entity that owns, leases, or operates a place of public accommodation; and (3) the plaintiff was denied public accommodations by the defendant because of her disability.” Molski v. M.J. Cable, Inc., 481 F.3d 724, 730 (9th

1 Cir. 2007).

2 While Plaintiff has pled that she was disabled and that  
3 Defendant operates a place of accommodation, she has not  
4 sufficiently alleged that she was denied public accommodations  
5 by Defendant because of her disability. As Defendant points  
6 out, the facts of this case have nothing to do with Plaintiff's  
7 disability. See Mot. at 5-6. Defendant's employee driving a  
8 motorized accessibility scooter into Plaintiff is wholly  
9 disconnected from Plaintiff's physical disabilities. Plaintiff  
10 also does not allege that she otherwise requested a public  
11 accommodation. Indeed, nowhere in the FAC does Plaintiff allege  
12 that Defendant denied her a public accommodation, much less that  
13 it did so because of her disability.

14 Plaintiff focuses her opposition on statutory and Article  
15 III standing, relying on the Ninth Circuit's decision in Chapman  
16 v. Pier 1 Imports (U.S.) Inc., 631 F.3d 939 (9th Cir. 2011).  
17 See Opp'n at 5-8. But this focus is misplaced. Even if  
18 Plaintiff has standing, she still fails to present a plausible  
19 ADA claim because she has not alleged that she was denied public  
20 accommodations because of her disability. Even considering her  
21 standing arguments in the context of denial of public  
22 accommodations, Plaintiff still fails to present a plausible  
23 claim. In her discussion of Chapman, Plaintiff argues that she  
24 has a mobility disability under the ADA and therefore can allege  
25 an ADA violation that relates to her disability. See id. at 7-  
26 8. But, in order to maintain her ADA claim she must allege that  
27 she requested a public accommodation, or that she was denied one  
28 because of her disability. Plaintiff did not do this in her FAC.

1 Finally, relying on Baughman v. Walt Disney World Co., 685  
2 F.3d 1131 (9th Cir. 2012), Plaintiff argues that Defendant  
3 violated the ADA by allowing the use of motorized accessibility  
4 scooters without first considering the safety factors listed in  
5 28 C.F.R. Section 36.311(b). See Opp'n at 9-10. As Defendant  
6 states, Plaintiff misconstrues Baughman. See Mot. at 6. In  
7 Baughman, the plaintiff requested that the defendant modify its  
8 policy to allow the use of a Segway. Baughman v. Walt Disney  
9 World Co., 685 F.3d at 1132. Here, Plaintiff did not request a  
10 modification, and therefore Baughman is inapposite.

11 For all the foregoing reasons, the Court grants Defendant's  
12 motion to dismiss the FAC's first cause of action.

13 C. California Disabled Persons Act

14 A violation of the ADA constitutes a violation of the DPA.  
15 Cal. Civ. Code § 54.1(d). To state a claim under the DPA  
16 independent of the ADA, a plaintiff must plead that they were  
17 denied equal access to a public space. Cal. Civ. Code § 54(a)  
18 ("Individuals with disabilities . . . have the same right as the  
19 general public to the full and free use of . . . public  
20 places."); see also Azocar v. Delta Air Lines, Inc., 562 F.  
21 Supp. 3d 788, 795 (C.D. Cal. 2021).

22 Because Plaintiff has not pled a violation of the ADA, see  
23 supra Part II.B, she must plead denial of equal access to a  
24 public space. See Cal. Civ. Code § 54(a). But, as Defendant  
25 points out, Plaintiff does not plead a violation of the DPA  
26 separate from a violation of the ADA. See Reply at 4. Instead,  
27 in the second count of the FAC, Plaintiff hinges her DPA claim  
28 on her ADA claim. FAC ¶ 33 ("The defendant also violated her

1 rights under the ADA, and, therefore, infringed upon or violated  
2 (or both) Berexa's rights under the Disabled Persons Act."). .  
3 Plaintiff argues in her opposition that this allegation cannot  
4 be read "in a vacuum" and that she has pled detailed facts as  
5 for "her disabled status, the defendant's policies, and her  
6 injuries as a result therefrom." See Opp'n at 11. But even  
7 accepting these factual allegations, this claim still fails for  
8 the same reason her ADA claim fails: nowhere in the FAC does  
9 Plaintiff allege that she was denied full and equal enjoyment of  
10 Defendant's store.

11 Plaintiff further alleges that Defendant's policy allowing  
12 motorized accessibility scooters violates the DPA. See id.  
13 This allegation appears unfounded, as Defendant argues that its  
14 policy enables patrons with physical disabilities to enjoy full  
15 and equal use of the store. See Mot. at 9. Regardless,  
16 Plaintiff does not allege sufficient facts to show that  
17 Defendant's policy denied her full and equal enjoyment of  
18 Defendant's store.

19 Accordingly, the Court grants Defendant's motion to dismiss  
20 the FAC's second cause of action.

21 D. Unruh Civil Rights Act

22 California courts have long recognized "the general rule  
23 that statutory causes of action must be pleaded with  
24 particularity . . . [and] to state a cause of action against a  
25 public entity, every fact material to the existence of its  
26 statutory liability must be pleaded with particularity." Lopez  
27 v. S. Cal. Rapid Transit Dist., 40 Cal. 3d 780, 795 (1985)  
28 (internal quotation marks and citation omitted). To state a

1 claim for discrimination under Unruh, the plaintiff must prove  
2 that the defendant denied full and equal accommodations to the  
3 plaintiff. See Jud. Council of Cal. Civil Jury Instructions,  
4 CACI No. 3060 (Unruh Civil Rights Act—Essential Factual  
5 Elements) (2021). “In general, a person suffers discrimination  
6 under the Act when the person presents himself or herself to a  
7 business with an intent to use its services but encounters an  
8 exclusionary policy or practice that prevents him or her from  
9 using those services.” White v. Square, Inc., 7 Cal. 5th 1019,  
10 1023 (2019).

11 In the third count of the FAC, Plaintiff references  
12 California Civil Code Section 51, which states that all  
13 individuals with disabilities are entitled to the full and equal  
14 accommodations in all business establishments, and that no  
15 business shall discriminate based on disability. FAC ¶¶ 36-38.  
16 However, as explained above, Plaintiff has not alleged that  
17 Defendant denied her full and equal accommodations. See supra  
18 Part II.B-C.

19 Plaintiff also alleges that “architectural barriers are  
20 also present at the store” and that removal of these barriers  
21 would “make the store accessible to the physically disabled.”  
22 FAC ¶ 13. But Plaintiff does not allege that she encountered  
23 any architectural barriers that denied her full and equal  
24 enjoyment, which falls short of her requirement to plead with  
25 particularity. See Lopez v. S. Cal. Rapid Transit Dist., 40  
26 Cal. 3d at 795.

27 Because Plaintiff does not allege that “an exclusionary  
28 policy or practice” prevented her from using the services of

1 Defendant, she has not stated a claim for discrimination under  
2 Unruh. See White v. Square, Inc., 7 Cal. 5th at 1023.  
3 Accordingly, the Court grants Defendant's motion to dismiss the  
4 FAC's third cause of action.

5 E. Full and Equal Access to a Public Accommodation

6 In the FAC, Plaintiff does not allege a specific violation  
7 of the Health and Safety Codes. Instead, she references two  
8 general provisions that require places of public accommodation  
9 to be accessible. First, Plaintiff alleges a violation of  
10 Health and Safety Code Section 19955(a), which requires  
11 adherence to California Government Code Section 4450, which in  
12 turn requires all places of public accommodation to be  
13 accessible to persons with disabilities. See FAC ¶ 43; Cal.  
14 Health & Safety Code § 19955(a); Cal. Gov. Code. § 4450.  
15 Second, Plaintiff alleges a violation of Health and Safety Code  
16 Section 19959, which states that all places of public  
17 accommodation are subject to the requirements listed elsewhere  
18 in the Code. See FAC ¶ 44; Cal. Health & Safety Code § 19959.

19 As Defendant observes and as previously explained,  
20 Plaintiff pleads no facts to show how Defendant's store is  
21 inaccessible to customers with physical disabilities. See supra  
22 Part II.B-D; Mot. at 12. Plaintiff contends that she need not  
23 plead the existence of specific architectural barriers because  
24 she can amend her complaint after discovery commences. Opp'n at  
25 13-14. Plaintiff is incorrect. She must plead a violation of  
26 the Health and Safety Codes to present a plausible claim.  
27 Because she fails to plead with particularity any violation of  
28 California Health and Safety Code, her claim must be dismissed.



1 See Lopez v. S. Cal. Rapid Transit Dist., 40 Cal. 3d at 795.

2 Accordingly, the Court grants Defendant's motion to dismiss  
3 the FAC's fourth cause of action.

4 F. Leave to Amend

5 A court granting a motion to dismiss a claim must then  
6 decide whether to grant leave to amend. Leave to amend should  
7 be "freely given" where there is no "undue delay, bad faith or  
8 dilatory motive on the part of the movant, . . . undue prejudice  
9 to the opposing party by virtue of allowance of the amendment,  
10 [or] futility of [the] amendment . . . ." Foman v. Davis, 371  
11 U.S. 178, 182 (1962). However, leave to amend need not be  
12 granted where amendment is "futile." AmerisourceBergen Corp. v.  
13 Dialysist W., Inc., 465 F.3d 946, 951 (9th Cir. 2006). Indeed,  
14 "[a]n amendment is futile when no set of facts can be proved  
15 under the amendment to the pleadings that would constitute a  
16 valid and sufficient claim." Missouri ex rel. Koster v. Harris,  
17 847 F.3d 646, 656 (9th Cir. 2017) (internal quotation marks and  
18 citation omitted).

19 Here, leave to amend is futile. Plaintiff requested leave  
20 to file the FAC. See Motion to Amend Compl., ECF No. 8. In its  
21 opposition to Plaintiff's request, Defendant presented similar  
22 arguments as in its present motion regarding the first four  
23 causes of action, putting Plaintiff on notice of the deficiencies  
24 in the FAC. See Opp'n to Motion to Amend Compl., ECF No. 10. In  
25 granting Plaintiff leave to amend, the Court stated that  
26 "Defendant's futility arguments are better suited for a fully-  
27 briefed dispositive motion." See Minute Order, ECF No. 14.  
28 Having considered the fully brief instant motion, the Court finds

1 that "amendment is futile" because "no set of facts can be proved  
2 under the amendment to the pleadings that would constitute a  
3 valid and sufficient claim" for the first four causes of action.

4 See Missouri ex rel. Koster v. Harris, 847 F.3d at 656.

5 Plaintiff requested the "opportunity to 'fine-tune' her  
6 pleading." See Opp'n at 14. But the first four counts cannot be  
7 fine-tuned to state plausible claims because Plaintiff cannot  
8 plausibly plead that she was denied full and equal use of public  
9 accommodations based on the facts of this case. The Court denies  
10 Plaintiff's request for a third bite at the apple. There are no  
11 additional factual allegations that can be plead which might  
12 magically turn this run of the mill personal injury case into an  
13 ADA, DPA, Unruh Act or Public Accommodation case.

14 III. ORDER

15 For the reasons set forth above, Defendant's motion to  
16 dismiss the first four causes of action in the FAC is GRANTED  
17 WITHOUT LEAVE TO AMEND.

18 Defendant shall file its Answer to the only remaining count—  
19 the fifth cause of action for personal injury— within fourteen  
20 (14) days of this Order.

21 IT IS SO ORDERED.

22 Dated: October 1, 2024

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24   
25 JOHN A. MENDEZ  
26 SENIOR UNITED STATES DISTRICT JUDGE  
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